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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 UNITED STATES OF AMERICA,  
9 Plaintiff,

10 v.

11 ENRIQUE MAGANA-GUZMAN,  
12 Defendant.

Case No. CR12-62RSL

ORDER DENYING MOTION  
TO SUPPRESS AND MOTION  
FOR FRANKS HEARING

13 **I. INTRODUCTION**

14 This matter comes before the Court on defendant Enrique Magana-Guzman's  
15 "Motion to Suppress Fruits of a Search of a Residence and for Evidentiary Hearing  
16 Pursuant to Franks v. Delaware" (Dkt. # 659). Defendant seeks an order suppressing the  
17 evidence seized during a search of his residence pursuant to a search warrant based on  
18 his contentions that the affidavit supporting the warrant application did not support a  
19 finding of probable cause because it was based on stale information. Defendant also  
20 contends that the affidavit omitted material facts that when included, preclude a finding  
21 of probable cause and thus, an evidentiary hearing is necessary under Franks v.  
22 Delaware, 438 U.S. 154 (1978). The Court heard oral argument on March 28, 2013.  
23 For the reasons set forth below, the Court DENIES defendant's motion.

## II. DISCUSSION

### A. Background

This case arises out of a long-term investigation into the Berrelleza drug trafficking organization, a large-scale organization with ties to a Mexican-based drug cartel. The investigation has yielded an indictment against thirty-four defendants in all.

As part of the investigation into the conspiracy, the government applied for and received a search warrant authorizing the search of twenty locations, many of which were the residences of defendants who had recently been indicted by the grand jury. To support the warrant application, R. Michael Gallegly, a Special Agent with Homeland Security Investigations, prepared and signed an affidavit outlining the investigation of the Berrelleza organization and the probable cause justifying the search of each location.

One of the locations listed to be searched was defendant Enrique Magana-Guzman's suspected residence at 1029 Bluff Ave, in Snohomish, Washington.<sup>1</sup> Based on the authorized search of that residence, federal agents found and seized documents, cell phones, cassette tapes and a white Cadillac Escalade.

### B. Analysis

A magistrate judge may issue a search warrant if, under the totality of circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular location. Illinois v. Gates, 462 U.S. 213, 238 (1983). A magistrate judge's decision that an affidavit supports a finding of probable cause is "afforded great deference by reviewing courts" and should be upheld unless clearly erroneous. United States v. Alvarez, 358 F.3d 1194, 1203 (9th Cir. 2004) (citation omitted). "In borderline cases, preference will be accorded to warrants and to the decision of the magistrate

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<sup>1</sup> The Court notes that Enrique Magana-Guzman's brother, Juan Magana-Guzman, has also been charged in relation to the drug trafficking conspiracy. Dkt. # 226 at 2. The Court's references to "Magana-Guzman" in this Order refer to defendant Enrique Magana-Guzman only.

1 issuing it.” United States v. Terry, 911 F.2d 272, 275 (9th Cir. 1990) (quoting United  
2 States v. Martinez, 588 F.2d 1227, 1234 (9th Cir. 1987)).

### 3 **1. Probable Cause**

4 Defendant argues that the affidavit did not support a finding of probable cause  
5 because a confidential informant’s report that defendant’s residence was being used as a  
6 stash house nine months before the government sought the search warrant was stale and  
7 the information provided by the informant was not corroborated and unreliable. Dkt. #  
8 659 at 9-10. The Court is not persuaded by either argument.

9 With respect to defendant’s first argument, an affidavit supporting a search  
10 warrant must be based on facts “so closely related to the time of the issue of the warrant  
11 as to justify a finding of probable cause at that time.” United States v. Lacy, 119 F.3d  
12 742, 745 (9th Cir. 1997) (quoting Durham v. United States, 403 F.2d 190, 193 (9th Cir.  
13 1968)). “The mere lapse of substantial amounts of time is not controlling in a question  
14 of staleness.” United States v. Dozier, 844 F.2d 701, 707 (9th Cir. 1988) (citing United  
15 States v. Foster, 711 F.2d 871, 878 (9th Cir. 1983)). In addition to considering the  
16 passage of time, “[t]he court should also evaluate the nature of the criminal activity and  
17 the kind of property for which authorization to search is sought.” Foster, 711 F.2d at  
18 878. When an affidavit alleges “the existence of a widespread, firmly entrenched, and  
19 ongoing narcotics operation . . . staleness arguments lose much of their force.” United  
20 States v. Hernandez-Escarsega, 886 F.2d 1560, 1566 (9th Cir. 1989); see also United  
21 States v. Greany, 929 F.2d 523, 525 (9th Cir. 1991) (upholding warrant based on two  
22 year old information about marijuana growing operation because it described “an  
23 ongoing criminal business of a necessarily long-term nature”); Dozier, 844 F.2d at 707  
24 (upholding warrant based on five and a half month old affidavit because “marijuana  
25 cultivation is a long-term crime”).  
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1       The nine month lapse between the alleged use of the residence as a stash house  
2 and the application for the search warrant does not establish that the information in the  
3 affidavit was stale. See Dozier, 844 F.2d at 707. While it may be true that a nine month  
4 lapse in time may make information stale in certain situations, other factors do not  
5 support such a finding in this case. For instance, the affidavit explained that members of  
6 the organization were seen arriving and leaving the residence as recently as one week  
7 before the application for the search warrant was submitted. Affidavit of Michael  
8 Gallegly (Dkt. # 731-1) (“Gallegly Affidavit”) ¶¶ 159-60. See, e.g., Alvarez, 358 F.3d  
9 at 1204 (rejecting staleness challenge where one to three year old information was  
10 corroborated by evidence of recent communication with co-conspirators); see also  
11 United States v. Vaandering, 50 F.3d 696, 700 (9th Cir. 1995) (finding twenty-two  
12 month old information not stale when “the older information was coupled with recently  
13 obtained information.”). Similarly, the affidavit described a lengthy investigation into a  
14 large-scale drug trafficking organization and the resulting indictment of more than thirty  
15 defendants. Gallegly Affidavit ¶¶ 8, 11-16. The allegations of both the size of the  
16 organization and the entrenched nature of its far-reaching operations, decrease the  
17 weight of defendant’s arguments that the confidential informant’s statements were stale.  
18 See Hernandez-Escarsega, 886 F.2d at 1566.

19       As for defendant’s second argument that the confidential informant was not  
20 reliable, the Court finds that the issuing judge could reasonably rely on the information  
21 to find the existence of probable cause. Contrary to defendant’s contention, the affiant  
22 explained that he considered the informant reliable because the information the  
23 informant provided was corroborated by other confidential informants, as well as other  
24 agents’ independent investigations. E.g., Gallegly Affidavit ¶¶ 73, 74, 85. Additionally,  
25 the informant correctly identified several residences that had been or were being used by  
26 members of the organization. Id. ¶¶ 80-82, 84, 85. Furthermore, contrary to defendant’s

1 contention, Dkt. # 659 at 10 n.18, the affidavit explains the confidential informant's  
2 criminal history, Gallegly Affidavit ¶ 70.

## 3 **2. Franks Hearing**

4 Defendant requests that the Court conduct a hearing pursuant to Franks v.  
5 Delaware, 438 U.S. 154 (1978) on the basis that the description of an intercepted call  
6 between two other defendants was intentionally misleading. Dkt. # 659 at 12-15.  
7 Franks held that “where the defendant makes a substantial preliminary showing that a  
8 false statement knowingly and intentionally, or with reckless disregard for the truth, was  
9 included by the affiant in the warrant affidavit, and if the allegedly false statement is  
10 necessary to the finding of probable cause, the Fourth amendment requires that a hearing  
11 be held at the defendant's request.” 438 U.S. at 155-56. Franks set forth a rule of  
12 limited scope; a defendant is entitled to a Franks hearing “only if he makes a two-fold  
13 showing: intentional or reckless inclusion or omission, and materiality.” United States  
14 v. Bennett, 219 F.3d 1117, 1124 (9th Cir. 2000). A false inclusion or an omission is  
15 considered material if the affidavit, purged of its defects or including the omitted, would  
16 not be sufficient to support a finding of probable cause. Id.

17 Defendant has not met his burden. Defendant contends that the affidavit's  
18 description of a call between two members of the organization was designed to suggest  
19 that defendant was present for a subsequent drug transaction and had the final part of the  
20 call been described in the affidavit, there would not have been probable cause to  
21 authorize the search of his residence. Dkt. # 659 at 14. The affidavit explained that  
22 Valenzuela, a member of the organization, telephoned “Mula,” an unknown member of  
23 the organization, and told Mula that he needed four “windows” for the car.<sup>2</sup> Gallegly  
24 Affidavit ¶ 124. After Mula told Valenzuela that “Rodo,” another member, was with  
“Kiki,” another name for defendant, ”Valenzuela told Mula to have Rodo call him. Id.

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25 <sup>2</sup> Agent Gallegly explained earlier in the affidavit that “window” is code for  
methamphetamine. Gallegly Affidavit ¶ 97.

1 The affidavit failed to mention that Valenzuela said that he, Rodo, was not there. See  
2 Dkt. # 659-1. The subsequent paragraphs of the affidavit allege that shortly after that  
3 call, Valenzuela met Rodo to obtain the drugs necessary to complete a transaction with a  
4 third-party. Gallegly Affidavit ¶¶ 125-27. Agents then saw Valenzuela meet the third-  
5 party, and engage in an exchange of methamphetamine for money. Id. The affidavit  
6 does not mention defendant after the description of the call.

7 Defendant contends that the omission of Valenzuela's comment, "he was not  
8 there," was designed to suggest that defendant was with Rodo at the scene of the drug  
9 deal approximately two hours after the call. Dkt. # 659 at 14. Defendant, however, has  
10 not made a preliminary showing that this omission was intentional, or made with  
11 reckless disregard for the truth. Defendant's belief that the omission was deliberate,  
12 without more, is insufficient to show intent or reckless disregard for the truth. See  
13 United States v. Prime, 431 F.3d 1147, 1150 n.1 (9th Cir. 2005). Additionally, while the  
14 description of the call may be incomplete, the missing information is not material to the  
15 finding of probable cause to search defendant's house. The paragraphs describing both  
16 the call and the subsequent alleged drug deal were in a section of the affidavit regarding  
17 the probable cause to search the third-party's residence, not defendant's residence.  
18 Gallegly Affidavit ¶¶ 122-37. The section of the affidavit supporting probable cause to  
19 search defendant's residence does not mention this call or the related transaction. See  
20 id. ¶¶ 156-60. Furthermore, the affidavit, as written, does not create an inference that  
21 defendant was present for the transaction. While the description alleges that Rodo,  
22 Valenzuela, and the third-party were involved in the exchange, there is no mention that  
23 defendant was with Rodo at that time. See id. ¶¶ 125-27. Thus, even if the information  
24 was omitted intentionally, defendant still would not be entitled to a Franks hearing  
25 because the information was not material to finding probable cause to search his  
26 residence. United States v. Chavez-Miranda, 306 F.3d 973, 979 (9th Cir. 2002) ("The

1 movant bears the burden of proof and must make a substantial showing to support both  
2 [deliberate falsehood and materiality].”).

### 3 **III. CONCLUSION**

4 For all of the foregoing reasons, the Court DENIES defendant Enrique Magana-  
5 Guzman’s “Motion to Suppress Fruits of a Search of a Residence and for Evidentiary  
6 Hearing Pursuant to Franks v. Delaware” (Dkt. # 659).

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8 DATED this 11th day of April, 2013.

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11 Robert S. Lasnik  
12 United States District Judge  
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